

Highlights from the Submission by the Government of the United States to  
the Government of Japan Regarding Deregulation, Competition Policy,  
and Transparency and Other Government Practices in Japan.

October 7, 1998

The submission by the United States on Deregulation, Competition Policy, and Transparency and Other Government Practices provided to Japan today sets out an ambitious agenda for deregulation and market opening in several critical sectoral and structural areas of the Japanese economy. The U.S. submission contains important new proposals, as well as proposals which build on the measures contained in the Joint Status Report issued by both governments in May 1998. A number of the key proposals contained in the U.S. submission are set out below.

## **I. TELECOMMUNICATIONS**

Despite progress, competition in Japan's \$128 billion telecommunications and broadcasting market remains stymied both by overregulation of new entrants and a lack of effective regulatory discipline over entrenched firms with dominant market power. As a result, choice of service providers remains limited and Japan's telephone rates remain among the highest among OECD countries. In today's submission, the United States urges Japan to adopt numerous market liberalizing measures.

### Interconnection

For competitive carriers, paying NTT to complete calls on NTT's network (interconnection) typically accounts for 50 percent or more of their costs--a major impediment to stimulating competition. With interconnection rates in Japan three to five times those of other competitive markets, Japan has tremendous margins for reductions. In line with the Joint Status Report, the United States is urging Japan to introduce as early as possible in the year 2000 a methodology (Long-Run Incremental Cost) to ensure these rates are market based, and before such a methodology is in place, make steady interim reductions towards this goal.

### Dominant Carrier Regulation

Dominant carriers, such as NTT, are able to exercise competition distorting influences over the functioning of the market. As such, the U.S. believes Japan should establish a system to discipline dominant carriers while liberalizing rules and requirements for non-dominant carriers. This regulatory distinction should be applied to the system for approval of end-user rates, approval of terms and conditions for new services, rights-of-way, and other areas where market power may impede competition.

## Rights-of-Way

Most facility-based telecommunications providers in Japan are associated with companies with exclusive access to valuable rights-of-ways. Given the premium on space in Japan, such companies have a tremendous advantage. While such carriers (including NTT) have no interest in sharing these rights-of-ways with new competitors, that is precisely what is necessary if Japan is to achieve the kinds of new facilities investment now occurring in other competitive markets. Building on the Joint Status Report, the U.S. is proposing that Japan establish regulations requiring transparent, non-discriminatory, timely, and cost-based access to all poles, ducts, conduits and rights-of-way owned or controlled by NTT and other utility companies. This will ensure that new entrants (including cable TV companies) have fair access to the scarce resources essential to building a competing network.

## Direct-to-Home Communications Satellite Services

Japan's communications satellite services market continues to be plagued by outdated regulations developed in the era of analog broadcast transmission. This regulatory regime has added unproductive business costs and has hurt the development of innovative service offerings made possible through new digital technologies. The key aspect of this regime which should be deregulated is the so-called consignor-consignee relationship between satellite owners and program providers. The United States proposes that this system be abolished for digital direct-to-home satellite providers, to give these providers freedom to provide innovative services, based on the vast new channel offerings made possible by digital technology.

## **II. HOUSING**

The U.S. and Japan share the goal of improving the quality and lowering the cost of housing in Japan. In this context, the United States has emphasized the elimination of tariffs on wooden building materials, which was endorsed by APEC Heads of State at their November 1997 meeting in Vancouver. The U.S. urges the GOJ to undertake the following measures:

### Transparency

The U.S. believes it is essential that Japan ensure transparency in the implementation of the reforms to the Building Standards Law (BSL). As such, the U.S. is proposing that Japan adopt notice and comment procedures for administrative orders to be issued over the next two years to implement revisions to the BSL, including providing the U.S. with copies of draft implementing measures to facilitate an exchange of views and ensure consistency with international practice.

### Performance-Based Standards/Systems

Building on the Joint Status Report, the U.S. is calling on Japan to adopt several reforms to its standards system. The U.S. proposed measures, including: 1) that by March 31, 1999, Japan

implement a performance-based building standard for three-story, wood-frame construction, including multi-family and mixed-use (residential-commercial) buildings, in quasi-fire protection zones; 2) implement a centralized, uniform system for acceptance and evaluation of test data for building methods and materials (including foreign test data); and 3) by November 1, 1999, implement performance-based standards for all building materials and building systems to ensure fair and equitable treatment for all products and systems.

#### Product Approval/Certification

To facilitate the introduction of foreign building materials, the U.S. is calling on Japan, by March 31, 1999, to allow Foreign Testing Organizations to function as Registered Grading Organizations, as recommended by the Interim Report of the Basic Issues Subcommittee of the Research Committee for Agricultural and Forestry Standards. The U.S. is also proposing that Japan expedite the approval of foreign test laboratories and evaluation bodies for building materials and construction methods, and expand the acceptance of foreign testing methods and grademarks deemed “equivalent” to their Japanese counterparts. Finally, the U.S. is calling on Japan, by November 1, 1999, to eliminate discriminatory treatment of foreign wooden windows by ensuring that all windows sold in Japan are tested to the same performance and fire standards.

### **III. MEDICAL DEVICES AND PHARMACEUTICALS**

The Government of Japan faces the critical challenge of ensuring high quality health care for a rapidly aging population while striving to contain overall health care costs. The following proposals are based on the belief that market-led innovation through deregulation and structural reform is the best means to improve health care quality while containing overall health care costs in Japan.

#### Recognition of Innovation

In line with the Joint Status Report, the U.S. urges Japan to adopt a market-based pricing system to promote the introduction of innovative pharmaceuticals, and to work constructively with industry and interested parties to develop as soon as possible streamlined and transparent procedures for the prompt creation of new functional reimbursement categories for medical devices.

#### Speed the Approval of New Products

Expanding upon the measures in the Joint Status Report, the U.S. has put forward several specific proposals to speed the approval and reimbursement of innovative medical devices and pharmaceuticals. For example, the U.S. calls on Japan to ensure that decisions made by reviewing personnel are binding on the reviewing institution and on others involved in the process, and to eliminate inconsistencies between reviewing bodies interpretations of the acceptability of foreign clinical data.

The U.S. strongly urges Japan to make steady and continuous progress in shortening the approval processing period for new drug applications as Japan implements the measures in the Joint Status Report to approve new drug applications within 12 months by April 2000. U.S. proposals include: 1) allowing the submission and simultaneous review of more than one pending new drug applications for the same drug; and 2) specifying clearly the criteria, the selection review process, and the time frame for approval of applications for priority product treatment.

#### **IV. FINANCIAL SERVICES**

The United States welcomes Japan's successful implementation of the measures in the 1995 U.S.-Japan Measures Regarding Financial Services, as well as the GOJ's actions taken to date under its Big Bang financial deregulation initiative. Further regulatory reform of Japan's financial markets will increase competition, helping to improve Japan's long-term growth prospects and contribute to a wider variety of investment opportunities for individuals and Japanese companies.

In this context, the United States would welcome deregulatory measures at the earliest possible date to: 1) favorably consider a move to a *tokkin* framework for the management of publicly-administered savings, including *Nempuku*, *Kampo* and *Yucho* funds; 2) eliminate the requirement that fund sponsors liquidate all investments when shifting business from one asset manager to another; 3) expand the scope of business opportunities for securities companies to offer new products and services; 4) eliminate restrictions on nonbanks' use of proceeds from bond and commercial paper issuance; 5) enhance disclosure by financial institutions (including fund managers) to market participants; and 6) introduce tax-advantaged defined contribution pension plans.

The U.S. also urges Japan to improve transparency in the financial services sector by:

1) establishing an open and transparent process for the approval of new products and services; 2) instituting notice and comment procedures for all new regulations, with sufficient time between finalization of regulatory changes and implementation that industry can make necessary organizational, operational and systems changes. The U.S. also calls on Japan to ensure that the establishment and operations of a Securities Investor Protection Fund are equitable, transparent and impose prudential discipline. Finally, the U.S. calls on Japan to use notice and comment procedures for regulations of private sector organizations, including the Japanese Securities Dealers Association, the Life and Non-life Policyholder Protection Organizations; and the Non-life Rating Organizations.

#### **V. ENERGY**

The U.S. believes market-led innovation through deregulation and structural reform are the best means to achieve Japan's objective of reducing energy costs to international levels while maintaining a stable energy supply. The U.S. proposes that Japan adopt numerous specific measures to achieve this goal.

### High Pressure Gas Law and Electricity Utilities Industry Law

Both the High Pressure Gas Law and Electricity Utilities Industry Law include unnecessarily burdensome requirements that impede foreign access to Japan's energy sector. The U.S. calls on Japan to revise and streamline the testing, inspection, and information requirements under these two laws.

### Power Generation Facilities

Due to continuing advances in power generating technology, equipment producers and electric utilities throughout the world have been able to introduce technological upgrades to existing machines and facilities to increase power output. However, Japan maintains onerous national, prefectural, and local restrictions making upgrading of existing power generation facilities uneconomical. The U.S. urges Japan to review and streamline these regulations.

### Standards and Transparency

The U.S. proposes that Japan accelerate privatization and reliance on voluntary, market-driven standards related to the energy sector, and move toward performance-based regulations through greater utilization of voluntary, private sector standards. The U.S. strongly urges Japan to ensure an open, competitive, transparent, and non-discriminatory procurement process, including allowing foreign energy goods and services suppliers to participate in relevant advisory councils, trade associations and other relevant bodies on an equal basis with Japanese manufacturers. All interested parties should also be given full and timely opportunity to review and comment on draft standards, technical requirements, and other regulations relating to the energy sector and to require private and quasi-government organizations that develop and issue standards, technical requirements and other regulations relating to the energy sector to use notice and comment procedures.

### Competition Policy

The U.S. Government appreciates the JFTC's surveys in the energy sector and urges it to monitor closely market developments, vigorously enforce the Antimonopoly Law, and dedicate additional resources to competition policy advocacy in this sector.

## **VI. LEGAL SERVICES**

Unreasonable and unnecessary restrictions on the provision of legal services continue to prevent both foreign and Japanese lawyers from offering clients fully integrated transnational legal services for domestic and cross-border transactions. For example, the U.S. proposes that Japan: 1) remove the prohibition against partnerships between Japanese lawyers (*bengoshi*) and foreign legal consultants (*gaikokuho-jimu-bengoshi*) and the prohibition against the employment of *bengoshi* by foreign legal consultants; 2) allow a foreign lawyer to count all of the time spent

practicing the law of the lawyer's home jurisdiction in Japan toward meeting the experience required to register as a *gaikokuho-jimu-bengoshi*, and not just the one year allowed under current practice; and 3) remove the partnership, employment and cost-sharing restrictions on relationships between quasi-legal professionals and *bengoshi* and *gaikokuho-jimu-bengoshi*.

## **VII. DISTRIBUTION**

### **Customs/Import Processing**

While Japan has recently undertaken efforts to modernize and expedite its slow and cumbersome customs clearance procedures, the U.S. believes further measures are warranted if Japan is to achieve processing times comparable to other industrialized countries. Specifically, the U.S. proposes that Japan: 1) simplify and streamline its cargo processing systems for importers who have established records of compliance with national customs laws and regulations; 2) permit the expansion of private bonded warehouse facilities around Narita; 3) extend normal customs processing hours at Narita Airport; 4) release cargo from customs 24 hours per day; and 5) adopt measures to modernize and expedite customs processing.

### **Retailing Services**

While the U.S. welcomes the repeal of the Large Scale Retail Stores Law -- a key market access barrier for foreign retailers and consumer goods manufacturers -- we strongly urge Japan to ensure that new measures that replace it and other measures that affect the retail sector are not used by local interests to unfairly restrict the establishment and/or expansion of large retail stores. Specifically, we call on Japan to: 1) draft guidelines for implementing the new Large Scale Retail Store Location Law which precisely define the environmental criteria local governments will be allowed to consider; and 2) carefully and continuously monitor local governments' application of the law to ensure that it is being used to address legitimate environmental concerns only and is not being used to thwart competition. The U.S. also proposes that Japan ensure that the study group that MITI is establishing to draft these guidelines will solicit and consider the views of large retailers, and use notice and comment procedures with respect to its interim report. The U.S. urges MITI to establish a formal process for hearing and acting on retailers' complaints if local governments unreasonably restrict large retail stores.

## **VIII. COMPETITION POLICY & ANTIMONOPOLY LAW**

The U.S. strongly believes that the Japan Fair Trade Commission (JFTC) should substantially boost its efforts as an advocate of competition policy and regulatory reform by championing removal of competition-blunting regulations -- especially regulations that block new firm entry. As such, the USG proposes that the JFTC set up a Competition Policy Bureau to act as an assertive competition advocate by promoting competition and regulatory reform in sectors of the Japanese economy that are or may be subject to government regulation. The USG also proposes that the JFTC set up a JFTC Retail Sector Competition Promotion Initiative whereby the JFTC

will closely monitor the activities of local and prefectural governments, which are considering requests to establish a large-scale retail store, and make submissions to these governments regarding the procompetitive effects of large-scale retail stores.

The USG proposal also urges the GOJ to amend the Antimonopoly Law (AML) to lift legal restrictions on private injunctive relief and private damage actions for alleged AML violations. In Japan there is a paucity of private AML cases in part because of legal restrictions that in essence extinguish the right of private parties to sue on their own. The USG strongly believes that the real availability of injunctive relief and damages through private litigation is an integral part of a comprehensive antimonopoly legal regime.

The USG submission also contains concrete proposals on strengthening criminal Antimonopoly Law enforcement. For example, the USG makes several proposals regarding how the Ministry of Justice and JFTC can improve cooperation and coordination on potential criminal matters. Moreover, the USG proposes that the JFTC conduct hearings or set up an advisory council to develop reform measures that will strengthen the JFTC's investigatory powers.

## **IX. TRANSPARENCY AND OTHER GOVERNMENT PRACTICES**

The U.S. urges Japan to provide greater transparency and increased opportunities for public participation in Japan's regulatory system which are essential complements to effective sectoral deregulation in Japan, and will lead to a more effective and accountable regulatory system. An improved regulatory environment would play an important role in reducing market access barriers faced by foreign firms.

### **Notice and Comment Procedures**

The U.S. urges Japan to adopt by the end of JFY 1998 government-wide notice and comment procedures that would enable all interested parties to participate effectively in the formulation and modification of regulations proposed by ministries, agencies and other government entities. In the interim government entities should on their own initiative use notice and comment procedures before issuing significant regulations.

### **Approval Process**

The United States made several proposals for Japan to adopt measures to rectify the burdensome and unpredictable nature of Japan's approval process, in particularly the processes used by the Ministry of Finance, the Financial Supervisory Agency, Ministry of Construction, and the Japan Harbor Transport Association.

### **Private Sector Regulations**

As the Japanese Government removes and relaxes regulations, it is essential that industry associations and other public interest corporations and other private sector organizations are not allowed to substitute private sector regulations (so-called “*min-min kisei*”) in place of government regulations. Accordingly, the United States urges Japan to prohibit government entities from delegating governmental or public policy functions, such as product certifications or approvals, to organizations unless such delegation is expressly provided by a statute; increase the transparency of private regulations; and establish an entity to monitor the use of private regulations.

#### Advisory Councils

Given the important role that advisory councils play in the regulatory process in Japan, the United States urges the Japanese Government to require all advisory councils to use notice and comment procedures when they issue interim reports and preliminary recommendations; increase the transparency of their proceedings; and allow foreign non-governmental persons and foreign companies to participate either as members or as observers at advisory council meetings.